

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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| MICHAEL PIGNATARO and MICHAEL CHASE, | : | Hon. Dennis M. Cavanaugh |
| Plaintiffs, | : | OPINION |
| v. | : | Civil Action No. 04-cv-1767 (DMC) |
| THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a bi-state agency, JOHN DOES (1-5) (Agents representatives and/or employees of the Port Authority of New York and New Jersey, | : | |
| Defendants. | : | |

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon motion by Defendant Part Authority of New York and New Jersey for a certificate of appealability pursuant to Federal Rule of Civil Procedure 54(b). Pursuant to Rule 78 of the Federal Rules of Civil Procedure no oral argument was heard. After carefully considering the submissions of the parties, and based upon the following, it is the finding of this Court that Defendant's motion for a certificate of appealability is **denied**.

I. BACKGROUND

On February 9, 2006 this Court entered an Opinion and Order granting Plaintiffs' motion for partial summary judgment. Specifically, this Court found that Plaintiffs qualify for the protection of the Federal Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), and are eligible for overtime. The February 9, 2006 Opinion and Order disposed of the liability issue of Plaintiffs'

claims. Still outstanding is the appropriate amount of damages owed by Defendants.

Defendant Port Authority moves for a certificate of appealability as to the liability issue pursuant to Rule 54(b).

II. DISCUSSION

Federal Rule of Civil Procedure 54(b) provides in relevant part,

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no reason for delay and upon an express direction for the entry of judgment.

It is within this Court's discretion to determine whether to grant the certificate of appealability.

See 10 Moore's Federal Practice, Comment on Rule 54(b); Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1, 8 (1980). It is the finding of this Court that certification for appeal of the February 9, 2006 Opinion and Order is inappropriate.

III. CONCLUSION

For the reasons stated, it is the finding of this Court that Defendant's motion for a certificate of appealability is **denied**. An appropriate Order accompanies this Opinion.

S/ Dennis M. Cavanaugh
Dennis M. Cavanaugh, U.S.D.J.

Date: July 5, 2007
Orig.: Clerk
cc: Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File